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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re DAMEAN G. et al., Persons Coming  
Under the Juvenile Court Law.

B187240  
(Los Angeles County  
Super. Ct. No. CK50056)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

LUIS G.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of California, Debra Losnick,  
Juvenile Court Referee. Affirmed.

John L. Dodd & Associates, Lisa A. DiGrazia, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, Larry Cory, Assistant County Counsel,  
and Jerry M. Custis, Deputy County Counsel for the Respondent.

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## **INTRODUCTION**

Defendant and appellant Luis G. (father) appeals from the juvenile court's order terminating his parental rights to his sons, Damean and Gabriel. Father contends that the juvenile court abused its discretion when it denied his request to continue the Welfare and Institutions Code<sup>1</sup> section 366.26 hearing until after the home study of the children's maternal grandparents had been completed. We affirm.

## **FACTUAL AND PROCEDURAL HISTORY**

In September 2002, the Department of Children and Family Services (the department) filed a petition concerning Damean, who was then four years old, and Gabriel, who was then two years old. The petition was filed after their mother gave birth to a third child who was born with a positive toxicology for methamphetamine.<sup>2</sup> Damean and Gabriel were detained, the allegations of the petition were sustained, and the children were ultimately placed with their maternal grandparents in September 2004. During at least a portion of this time, father was incarcerated, and he had little contact with the children.

After both parents failed to reunify with the children, the department recommended adoption as the permanent plan. According to a status review report dated February 17, 2005, the maternal grandparents were "undecided" between legal guardianship and adoption. The grandfather told the social worker, "Everything has been going well with the kids, although I do not know what is my daughter doing or planning on doing. My wife and I have not made up our mind about what permanent plan to consider, but we will have an answer for you by next week." A week later, the grandparents informed the social worker that they were willing to proceed with adoption.

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<sup>1</sup> All further undesignated statutory references are to the Welfare and Institutions Code.

<sup>2</sup> The petition was later supplemented to allege domestic violence and physical abuse of Damean.

The trial court therefore scheduled a section 366.26 hearing for July 7, 2005. The July 7 hearing, however, was continued to August 17, and the court ordered the department to prepare a supplemental report to address the home study and to re-interview the grandparents regarding their wishes for the children's permanent placement plan. The addendum report stated "that [maternal grandmother] appeared hesitant in moving forward with the adoption of her grandchildren . . . . [Maternal grandmother] stated that she wanted the children to remain in her home if there was no possibility of her daughter ([birth mother]) recovering her children. [Maternal grandmother] stated that this is why she was hesitant in adopting the children. [Maternal grandfather] stated that he was motivated to proceed with the adoption but noticed some hesitation in his wife."

The status review report similarly stated that the grandparents "continue to cooperate with the adoption home study procedures, although maternal grandmother has reported some skepticism due to her loyalty to the mother." The maternal grandmother said, " 'Of course, I will support my husband on the adoption process, but if it was up to me only, I would not. It is difficult for me to assimilate that I am taking my daughter's children away, as she has told me that I am taking her reason for living away.' " The maternal grandfather said he was " 'more than willing to proceed with the adoption.' " Based on some tension among family members in the grandparents' home, the social worker recommended that the family participate in family preservation services for a six month period, during which time the adoptive home study could not be approved.<sup>3</sup>

The section 366.26 hearing was continued to October 12, 2005. Father, who was again incarcerated, wrote a letter requesting a continuance of the hearing. At the hearing, father's counsel repeated the continuance request and objected based on the August 17 report, which indicated that it was unclear whether the grandparents actually wanted to adopt or not. The court replied, "I understand what you are saying. Looking at page 15 of the August 17 report, 'but I do think that the family unit is going to adopt these two

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<sup>3</sup> These "tensions" apparently concerned Ricardo, Jr., the maternal grandparent's teenage son. Ricardo, Jr., had previously hit Damean in the face with a sandal in 2003.

children.’ I am going to note your objection, deny your request. I am going to go forward.” The court then terminated parental rights and ordered that the children be placed for adoption.

## DISCUSSION

### **I. The juvenile court did not abuse its discretion in denying father’s request for a continuance.**

Father contends the juvenile court abused its discretion when it denied his request for a continuance of the section 366.26 hearing until the maternal grandparents’ home study had been approved. Under section 352, a continuance shall be granted only upon a showing of good cause.<sup>4</sup> No continuance shall be granted that is contrary to the minor’s interest, and, in “considering the minor’s interests, the court shall give substantial weight to a minor’s need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.” (§ 352, subd. (a).) We may reverse an order denying a continuance only on a showing of an abuse of discretion. (*In re Ninfa S.* (1998) 62 Cal.App.4th 808, 810-811.)

Father argues that continuing the section 366.26 hearing until after completion of the home study will ensure the children will not become “legal orphans” and will not be removed from their home if the grandparents agree only to legal guardianship. The first problem with father’s argument is completion of a home study is not a prerequisite to termination of parental rights. (*In re Marina S.* (2005) 132 Cal.App.4th 158, 166 [“there is no requirement that an adoptive home study be completed before a court can terminate parental rights”].) Rather, parental rights shall be terminated if family reunification services have been terminated and if the juvenile court determines, based on an assessment and any other relevant evidence, by clear and convincing evidence that it is

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<sup>4</sup> We reject the department’s argument that father failed to make his request for a continuance in writing, as section 352, subdivision (a), requires. He sent a letter to the court requesting a continuance until after January 3, 2006.

likely the child will be adopted.<sup>5</sup> (§ 366.26, subd. (c)(1); *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 249-250; see also *Marina S.*, at p. 166.) A child need not even be placed in a preadoptive home before a court can conclude he or she is adoptable and terminate parental rights. (§ 366.26, subd. (c)(1).) Thus, that the maternal grandparents' home study was not completed by the time of the section 366.26 hearing did not require a continuance of that hearing.

Nor are the circumstances in this case like those in *In re Salvador M.* (2005) 133 Cal.App.4th 1415 (*Salvador*), upon which father relies. In that case, Salvador was placed with his grandparents who wanted to adopt him. The grandparents already had legal guardianship of Salvador's older brother, with whom Salvador developed a sibling relationship. The grandparents' home study had not been completed by the time the section 366.26 hearing was held, but the social worker said she expected the home study to be approved. Fifty other families had also been identified as willing to adopt a child with Salvador's characteristics. The juvenile court concluded that Salvador was adoptable and that Salvador and his brother had a sibling bond. The court also found that if the grandparents adopted Salvador the sibling bond exception to adoption would not apply because he would be living with his brother. It would apply only if the adoption fell through and Salvador was adopted by another family. The court of appeal said that under such circumstances, "the better procedure for the juvenile court to have followed where it concluded the sibling relationship exception to adoption would not apply if the grandmother adopted Salvador but would apply if someone else adopted the child would have been to continue the hearing until the grandmother's home study had been completed." (*Id.* at p. 1422.)

This case is not like *Salvador*, because it does not involve the sibling relationship exception. Moreover, notwithstanding that it might be preferable to have a completed home study before a section 366.26 hearing occurs, the juvenile court here made a finding, which the record supports, that the grandparents were likely to proceed with the

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<sup>5</sup> Father does not challenge the finding that the children are adoptable.

adoption. The children's grandfather expressed his commitment to adopting the children. The grandmother's hesitation about adoption was grounded solely in her concern about "taking" her daughter's children away from her. The juvenile court, however, could have believed that termination of mother's parental rights would allay her doubts. We therefore conclude that the juvenile court did not abuse its discretion in denying father's request to continue the section 366.26 hearing.

**DISPOSITION**

The order is affirmed.

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ALDRICH, J.

We concur:

CROSKEY, Acting P. J.

KITCHING, J.